

Employer Exhibit 1 (Rejected) (Offer of Proof)

1
2
3
4
5
6
7 UNITED STATES OF AMERICA
8 BEFORE THE NATIONAL LABOR RELATIONS BOARD
9 REGION 19

10 TWIN CITY FOODS, INC.,

Case No. 19-RC-265696

11 Employer,

12 and

13 UNITED FOOD AND COMMERCIAL
14 WORKERS INTERNATIONAL UNION,
15 LOCAL 1439,

Petitioner.

16 **EMPLOYER'S OFFER OF PROOF**

17
18 Peter Finch
19 Nicole Mormilo
20 Davis Wright Tremaine LLP
21 920 Fifth Avenue, Suite 3300
22 Seattle, WA 98104
23 Telephone: 206.622.3150
24 Facsimile: 206.757.7700
25 peterfinch@dwt.com
26 nicolemormilo@dwt.com
27 Attorneys for Employer

1 Having been precluded from presenting any evidence to address the question
2 concerning the appropriate unit in this case, the Employer, pursuant to §102.66(c) of the
3 Board's Rules and Regulations, makes the following offer of proof:

- 4
- 5 1. If permitted to provide evidence in this matter, the Employer would present at least five
6 (5) witnesses who, together, would provide direct evidence regarding every aspect of
7 the Employer's Pasco operations:
- 8 a. CFO Virgil Roehl
 - 9 b. Pasco Division Manager Raul Martinez
 - 10 c. Pasco Plant Manager Mike Twiss
 - 11 d. Human Resources Director Beatriz Gutierrez
 - 12 e. Ellensburg Division Manager Grant Craig
- 13
- 14 2. The Employer would also provide hundreds of pages of documents, including
- 15 a. The organization chart for the Pasco facility, which would show the
16 management hierarchy at the Pasco facility, as well as shared supervision among
17 the packaging, processing, and warehouse employees.
 - 18 b. The employee handbook that sets forth the rules and benefits that apply to all
19 Pasco employees.
 - 20 c. Wage information for all packaging, warehouse, and processing employees.
 - 21 d. Payroll records that document the regular interchange between packaging and
22 processing employees.
 - 23 e. Employee rosters showing the job classifications applicable to the processing,
24 packaging, and warehouse functions.
- 25
26
27

- 1 f. Crew sheets, which are used on a daily basis to document interchange between
2 processing and packaging as employees move from one aspect of the
3 Employer's operation to the other to address staffing and production needs.
- 4 g. Photographs of the Employer's Pasco operations, and the facility plan (a floor
5 plan of the plant) showing the plant's work flow, and how employees in each
6 area interact and cooperate to ensure the Employer's products are produced and
7 the operation runs on a daily basis.
- 8
- 9 3. Mr. Roehl would provide testimony regarding his direct role in the analysis and process
10 that led to the Employer to move its packaging operations from Stanwood, Washington,
11 to Pasco. More specifically:
- 12 a. Mr. Roehl would testify that the Employer's Ellensburg, Washington, and Lake
13 Odessa, Michigan, operations are functionally integrated; processing,
14 warehouse, and packaging functions are under one roof, and product works its
15 way from one area to the next, with regular interchange among employees at
16 those plants.
- 17
- 18 b. Mr. Roehl would testify further that the Employer's Stanwood plant was
19 previously integrated, with processing, warehouse, and packaging functions
20 under the same roof, until the Employer's ability to get raw product was
21 virtually eliminated as the farmland that served as the primary source for that
22 product shrank over time as it was converted for residential and commercial use.
- 23
- 24 c. Mr. Roehl would testify that, to achieve the efficiencies it realized in Stanwood,
25 the Employer decided – after several years of analysis and planning – to move
26 the packaging operations from Stanwood to Pasco.
- 27

1 d. And Mr. Roehl would testify that the move has achieved the desired end: among
2 other things, the Employer's Pasco operations operate like the Ellensburg and
3 Lake Odessa operations; the duplication of managers, sanitation crews, and
4 related support (mechanics, electricians, etc.) has been eliminated; and the time
5 and cost of moving product from Pasco to Stanwood has been eliminated.

6 4. Pasco Division Manager Raul Martinez and Pasco Plant Manager Mike Twiss would
7 provide testimony regarding aspect of the Pasco operations, including the physical
8 layout of the facility, the distance between the various work areas, and how the
9 operations are structured. For example:
10

11 a. Mr. Martinez would explain the organizational and administrative framework
12 for the Pasco facility, including the departmental groupings and how they
13 interact or interconnect with each other.

14 b. Mr. Martinez's testimony would explain how operational responsibility is
15 assigned to various managers throughout the plant, and how product is treated as
16 it moves through each phase of the operation.

17 c. Mr. Martinez would also authenticate photographs of the Employer's operations,
18 and he would explain, using an annotated facility plan, how product moves
19 through the plant, as well as employees must interact and interchange to ensure
20 the process operates properly.
21

22 d. Mr. Martinez would also explain that the Employer must provide a separate
23 breakroom for packaging employees not because they are a separate entity, but
24 to ensure food safety is maintained. Mr. Martinez would explain further that
25 having employees working with raw product mingling with packaging
26 employees could lead to cross-contamination. That concern, Mr. Martinez
27

1 would testify, does not impact employee interchange, because processing
2 employees who are assigned to work in packaging are provided sufficient notice
3 of the assignment so they report to the packaging area without entering the
4 processing area. Mr. Martinez would also testify that the parking lot near the
5 entrance closest to the packaging area is not reserved for packaging employees
6 only. Rather, Mr. Martinez would testify, the lot is provided as a convenience
7 for the packaging employees so they do not have to walk around the building
8 from the other parking lot, which could elevate the risk of food contamination.
9

10 5. Mr. Twiss would provide testimony consistent with Mr. Martinez's. Mr. Twiss would
11 also provide testimony regarding his role as the plant manager, generally, and his
12 responsibility for the processing and packaging functions at Pasco, in particular. For
13 example:

- 14 a. Mr. Twiss would testify that the packaging and processing supervisors report
15 directly to him, and that he is ultimately responsible for resolving problems that
16 arise in those areas.
17
18 b. Mr. Twiss would testify further regarding the regular interchange between
19 processing and packaging, using dozens of crew sheets that document the extent
20 to which employees from one area are assigned to the other on a daily basis.
21
22 c. Mr. Twiss would provide other examples of interchange, including how
23 employees from all areas of the plant would be used to assist with, for example,
24 the Employer's response to a stack of pallets falling in the warehouse, creating
25 an emergency that would require "all hands on deck" to resolve the matter as
26 soon as possible.
27

- 1 6. Mr. Martinez and Mr. Twiss would testify that most of the skills necessary to work in
2 either processing or packaging are the same. For example, filling and loading totes
3 (large bins used to hold product), inspecting product for quality control, and operating
4 equipment is largely the same in processing as it is in packaging. As such, Mr.
5 Martinez and Mr. Twiss would testify, the education, training, and experience necessary
6 is relatively equal.
- 7 7. Mr. Martinez and Mr. Twiss would testify that the shifts for all Pasco employees are the
8 same, and that all Pasco employees record their time using one of the several time
9 clocks located throughout the plant. Employees are not required to use any particular
10 time clock, but the expectation is that employees will use the one closest to the door
11 they used to enter the plant.
- 12 8. Mr. Martinez and Mr. Twiss would testify that the Employer maintain one plant-wide
13 seniority list for all Pasco employees. Each would testify that the seniority list is used
14 to address staffing issues created by the expansion or contraction of work, and to
15 facilitate employee moves from shift to shift in the event of contraction. There is
16 department seniority for packaging employees, but Mr. Twiss and Mr. Martinez is
17 maintained only to protect packaging employees from getting bumped by a seasonal
18 employee.
- 19 9. Mr. Martinez and Mr. Twiss would testify that Pasco employees all wear the same,
20 Employer-provided work clothes. All employees wear the same type of smock, but the
21 smocks are color-coded by department.
- 22 10. Mr. Craig would testify that the Pasco operations align with the Ellensburg operations
23 with regard to operational efficiency achieved by an integrated work flow, the regular
24 interchange among employees, the skills, necessary for each service line, etc. Mr. Craig
25
26
27

1 would also testify that the same company practices regarding the use of time clocks,
2 how some physical separation of certain aspects of the business is necessary to ensure
3 food safety, and how employees wear the same work clothes are the same at both
4 plants.

5 11. Ms. Gutierrez would provide testimony regarding employees' wages and benefits, as
6 well as work rules and policies common to all Pasco employees. Ms. Gutierrez's
7 testimony would be supported by the voter lists in the record, along with payroll
8 records, and an employee roster updated after close of business Thursday, September
9 24, 2020. Ms. Gutierrez would testify that all Pasco employees are subject to the same
10 work rules and policies; and are eligible to receive the same benefits, on the same terms.
11 Ms. Gutierrez's testimony would be supported by the employee handbook, which sets
12 forth those terms and conditions of employment. Ms. Gutierrez would also provide
13 testimony with regard to the Pasco employees' wages; that testimony would be
14 supported by the Employer's published wage scale.
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2 Dated this 25th day of September, 2020.

3
4 Davis Wright Tremaine, LLP
5 Attorneys for Respondent Twin City Foods, Inc.

6
7 By: 

8 Peter Finch
9 Nicole Mormilo
10 Davis Wright Tremaine LLP
11 920 Fifth Avenue, Suite 3300
12 Seattle, WA 98104
13 Telephone: 206.622.3150
14 Facsimile: 206.757.7700
15 peterfinch@dwt.com
16 nicolemormilo@dwt.com
17
18
19
20
21
22
23
24
25
26
27